

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Policies Regarding Mobile Spectrum	)	WT Docket No. 12-269
Holdings	)	
	)	

**REPLY TO OPPOSITIONS TO PETITION FOR RECONSIDERATION**

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Pursuant to Section 1.429 of the Federal Communications Commission’s (“Commission’s” or “FCC’s”) Rules, T-Mobile USA, Inc. (“T-Mobile”),<sup>1</sup> respectfully submits this consolidated reply<sup>2</sup> to the oppositions submitted by AT&T, Verizon, and Mobile Future to T-Mobile’s Petition for Reconsideration of the *Mobile Spectrum Holdings Report and Order* (the “Order”).<sup>3</sup>

**I. INTRODUCTION AND SUMMARY.**

The *Mobile Spectrum Holdings Report and Order* identifies a pervasive risk of anti-competitive foreclosure and adopts a spectrum reserve to prevent it, but then undercuts the effort without explanation by adopting a reserve that is potentially too small and too contingent for competitive carriers to use it to compete against the two dominant incumbents. The oppositions fail to identify any rationale for adopting a limited and contingent remedy to a problem the

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<sup>1</sup> T-Mobile USA, Inc. is a wholly owned subsidiary of T-Mobile US, Inc., a publicly traded company.

<sup>2</sup> T-Mobile timely filed a waiver requesting to exceed the standard page limits so that it may file a consolidated reply to the three oppositions that have been filed. See T-Mobile, Motion for Waiver of Page Limits, Docket No. 12-269 (Sept. 26, 2014).

<sup>3</sup> See *Policies Regarding Mobile Spectrum Holdings: Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6133 (2014) (“*MSH Report and Order*”); see also Opposition of AT&T to T-Mobile’s Petition for Reconsideration, WT Docket No. 12-269 (filed Sept. 24, 2014) (“AT&T Opposition”); Opposition of Mobile Future to Petitions for Reconsideration, WT Docket No. 12-269 (filed Sept. 24, 2014) (“Mobile Future Opposition”); Opposition of Verizon to Petitions for Reconsideration, WT Docket No. 12-269 (filed Sept. 24, 2014) (“Verizon Opposition”).

Commission identified as both likely and damaging. Instead, the oppositions alternatively ignore the Commission's findings on foreclosure or re-argue the very possibility foreclosure exists. The oppositions also ignore the two independent grounds for reconsideration that T-Mobile described, namely: (1) the *Order's* absence of any reasoned explanation for a MHz-POP revenue target or any meaningful weighing of the costs and benefits of such a rule in light of the Commission's findings regarding the likelihood of foreclosure; and (2) the need for reconsideration in light of events and circumstances that occurred since T-Mobile's last opportunity to comment in this proceeding.<sup>4</sup>

AT&T, Mobile Future, and Verizon also betray some fundamental misunderstandings of auction mechanics. For example, the three oppositions suggest that the MHz-POP price for the final stage rule and the reserve trigger should equal the price the spectrum would command in a functioning market after removing any foreclosure value AT&T and Verizon place on the spectrum. Given the inherent uncertainty of forecasting spectrum prices and the even greater uncertainty of identifying the foreclosure value the two dominant carriers might place on the spectrum, however, the opponents' proposal runs a considerable risk of setting both the reserve trigger and the auction closing rule too high, which would yield less broadband spectrum and, in all likelihood, less revenue as well. In addition, neither the *Order* nor the oppositions provide a mechanism to determine the amount of foreclosure value and hence risk setting a "market price" that *includes* foreclosure value, which would frustrate the Commission's entire public interest rationale for creating a spectrum reserve.

Tellingly, Verizon and AT&T claim that they require access to at least an additional twenty megahertz of low-band spectrum to meet *capacity* demands, rather than any particular

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<sup>4</sup> See 47 C.F.R. § 1.429(b) (explaining that a petition may raise arguments that "relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission").

coverage limitations. Using expensive 600 MHz coverage spectrum for capacity rather than coverage is foreclosure in action: the dominant carriers do not have to – and in all likelihood will not – idle spectrum to prevent their competitors from putting the available spectrum to its highest and best use for consumers.

Taken together, the oppositions only serve to reinforce the public interest benefit of (1) severing the link between the spectrum reserve trigger and the MHz-POP price component of the final stage rule; and (2) including at least half of the available 600 MHz auction spectrum in the spectrum reserve. The Commission should reconsider both the size and contingency of the spectrum reserve and adopt a meaningful remedy to address the substantial market failure the Commission identified.

## **II. THE COMMISSION’S FINDINGS ON FORECLOSURE INEXPLICABLY CONTRADICT ITS DECISION TO ADOPT A SMALL AND CONTINGENT SPECTRUM RESERVE.**

The Commission reconsiders decisions that contain material errors or omissions or where the petitioner relies on events or circumstances that were not known or did not exist until after the petitioner's last opportunity to present analysis to the Commission.<sup>5</sup> In its petition for reconsideration, T-Mobile presented two arguments and two independent grounds for reconsideration: (1) the Commission omitted a sufficient explanation for linking the spectrum reserve trigger to the MHz-POP price component of the final stage rule; and (2) new events and circumstances regarding the Commission’s desire for four nationwide competitors and its announcement that it plans to ban joint bidding merits reconsideration of the size of the spectrum

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<sup>5</sup> See, e.g., 47 C.F.R. § 1.429; see also *In the Matter of Connect Am. Fund*, Third Order on Reconsideration, 27 FCC Rcd. 5622 ¶ 1 (2012).

reserve. AT&T, Verizon, and Mobile Future conflate and misrepresent these grounds for reconsideration.<sup>6</sup>

First, T-Mobile petitioned the Commission to reconsider its decision to link the spectrum reserve to an arbitrary MHz-POP price, and T-Mobile explained that the Commission has not provided an adequate rationale for its decision to do so.<sup>7</sup> The Commission’s discussion regarding linking the spectrum reserve trigger to a MHz-POP price threshold is limited and mechanical, and not based on any record support. Although the trigger for creating the spectrum reserve includes two separate parts, a cost element and a revenue element, the Commission asserts that it “will set the spectrum reserve trigger at the point when the final stage rule” is satisfied.<sup>8</sup> The Commission’s stated rationale for setting the spectrum-reserve trigger focuses only on the first element of the minimum sales price requirement – the clearing costs of the auction – and not the second MHz-POP-based revenue requirement. The Commission explains that it seeks to “ensure that all bidders in the forward auction bear a fair share of the *clearing costs* identified in the reverse auction and the *other costs* specified in the Incentive Auction final stage rule.”<sup>9</sup> The Commission adds that the “spectrum reserve trigger” will “fairly distribute[e] the responsibility for *satisfying the costs* of the Incentive Auction among all bidders.”<sup>10</sup> While the Commission thus explains its rationale for the cost element of the spectrum reserve trigger, the Commission presents no such rationale for the revenue portion of the spectrum reserve

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<sup>6</sup> See, e.g., AT&T Opposition at 5, 7-11 (focusing solely on whether T-Mobile presented “new” evidence and arguing the petition was barred); Verizon Opposition at 7-8 (focusing only on whether T-Mobile presented new facts); Mobile Future Opposition at 5 (focusing only on whether T-Mobile presented new facts).

<sup>7</sup> See Petition for Reconsideration of T-Mobile, Docket No. 12-269 at 13 (Aug. 11, 2014) (“T-Mobile MSH Petition for Reconsideration”) (“Because it omitted any explanation for this choice, the Commission must reconsider this arbitrary and capricious decision to make its reserve trigger contingent on an artificial price per MHz-POP threshold.”).

<sup>8</sup> MSH Report and Order ¶ 187.

<sup>9</sup> See MSH Report and Order ¶ 185 (emphasis added). The term “clearing costs” references administrative costs, broadcaster clearing and repacking expenses, and remaining FirstNet costs, not a revenue target.

<sup>10</sup> *Id.* ¶ 186 (emphasis added). Under the Commission’s rationale, once the auction meets the clearing costs, reserved spectrum bidders will have contributed their fair share of the costs of the incentive auction.

trigger and never addresses the substantial risks to competition created by reintroducing foreclosure risk with a revenue requirement.<sup>11</sup> As AT&T concedes, the Commission “does not even discuss the specific price per MHz-POP trigger.”<sup>12</sup>

Indeed, the only argument that AT&T, Verizon, or Mobile Future advance regarding the sufficiency of the Commission’s explanation for adopting a minimum revenue requirement before establishing the spectrum reserve is a passing, out of context reference by the Commission to “market-based” prices.<sup>13</sup> But, contrary to AT&T’s suggestions, the Commission never raises any concern that reserve spectrum bidders will acquire spectrum below market prices and never discusses any rationale for determining what constitutes a “market” price in this setting. At a minimum, the Commission’s limited discussion of its decision to link the spectrum reserve trigger to the second MHz-POP-based reserve price falls far short of the requirement under well-settled principles of administrative law that the Commission “articulate a satisfactory explanation for” its decision, “including a ‘rational connection between the facts found and the choice made.’”<sup>14</sup>

Second, T-Mobile petitioned the Commission to reconsider the size of its spectrum reserve because (a) new circumstances exist since the public’s last opportunity for comment that merit reconsideration;<sup>15</sup> (b) the decision violates the statute’s requirement to avoid the excessive concentration of licenses;<sup>16</sup> and (c) the decision is internally inconsistent and thus arbitrary and capricious because it fails to address a stated objective of the FCC – which is to reserve

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<sup>11</sup> See *infra* Section III; see also T-Mobile MSH Petition for Reconsideration at 12-17.

<sup>12</sup> See AT&T Opposition at 16.

<sup>13</sup> See *id.* at 17 (citing *MSH Report and Order* ¶ 194).

<sup>14</sup> See *Motor Vehicle Manufacturers Assn. of the United States, Inc. v. State Farm Mutual Automobile Insur. Co.*, 463 U.S. 29, 43 (1983).

<sup>15</sup> See T-Mobile MSH Petition for Reconsideration at 7.

<sup>16</sup> See *id.* (“[T]he reserve falls short of the Commission’s statutory mandate to avoid excessive concentration of licenses.”).

sufficient spectrum to maintain four carriers.<sup>17</sup> AT&T, Verizon, and Mobile Future ignore the second and third bases for reconsideration, either of which, standing alone, would be sufficient to warrant consideration. Instead, the opponents merely claim that T-Mobile's petition fails to raise "new facts."<sup>18</sup>

AT&T, Verizon, and Mobile Future misunderstand the standard for a petition for reconsideration.<sup>19</sup> Under the Commission's rules, a petition may raise arguments that "relate to *events which have occurred or circumstances which have changed* since the last opportunity to present such matters to the Commission."<sup>20</sup> None of the opposing parties seriously contends that the Commission's decision to warn against any transactions among the national carriers,<sup>21</sup> or its decision to circulate an item preventing joint bidding among any of the national carriers,<sup>22</sup> are events or circumstances that occurred before the public's last opportunity to present arguments. As Commissioner Pai explained, the "warning against any major transactions among the top four national carriers" was "unprecedented."<sup>23</sup> In response, the oppositions claim that the public

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<sup>17</sup> See *id.* at 7-8 ("The ruling is also internally inconsistent because it simultaneously recognizes the importance of low-band spectrum to competitive wireless service offerings but fails to provide enough of a reserve to maintain the four nationwide-carrier structure of the current market."); see also Statement from FCC Chairman Tom Wheeler on Competition in the Mobile Marketplace, FCC News Release (Aug. 6, 2014), <http://fcc.us/1sk17dV> ("[F]our national wireless providers are good for American consumers."); Tom Wheeler, *The Facts and Future of Broadband Competition*, 1776 Headquarters, Washington D.C. (Sept. 4, 2014), available at <http://bit.ly/1o1tQ0F> ("First, where competition exists, the Commission will protect it. Our effort opposing shrinking the number of nationwide wireless providers from four to three is an example."); Tom Wheeler, *Speech at the 2014 CTIA Show*, Las Vegas, Nevada (Sept. 9, 2014), available at <http://bit.ly/1vIHmej> (explaining that the "American consumer has been the beneficiary" of the Commission's efforts to retain four national wireless providers).

<sup>18</sup> See, e.g., AT&T Opposition at 5, 7-11; Verizon Opposition at 7-8; Mobile Future Opposition at 5.

<sup>19</sup> Even a cite to the relevant rule – 47 C.F.R. § 1.429 – is notably absent from the Mobile Future and Verizon filings. See generally Verizon Opposition; Mobile Future Opposition.

<sup>20</sup> See 47 C.F.R. § 1.429(b)(1) (emphasis added).

<sup>21</sup> See *MSH Report and Order* ¶ 171 ("If significant changes in the marketplace structure occur or a proposed transaction is filed with the Commission in the future affecting the top four nationwide providers and their spectrum holdings, we will revisit our decisions here regarding the reserved spectrum provisions for the 600 MHz Band that we adopt today.").

<sup>22</sup> See Roger Sherman, *Empowering Small Businesses*, FCC Blog (Aug. 1, 2014) ("[T]he item tentatively concludes that joint bidding arrangements between nationwide providers should not be allowed."), <http://fcc.us/UFHJt8>.

<sup>23</sup> *MSH Report and Order*, Commissioner Pai Dissenting Statement at 136 (emphasis added).

either should have seen these “unprecedented” new limitations coming all along,<sup>24</sup> or claim, bizarrely, that certain types of new evidence do not count for purposes of reconsideration.<sup>25</sup> But the Commission’s rules governing petitions for reconsideration do not require petitioners to divine the Commission’s intent any more than it allows opponents to pick and choose what types of evidence qualify to establish new events or circumstances warranting reconsideration.<sup>26</sup> The Commission must explain the rationale for the decisions it adopts and is obliged to reconsider its decisions when new events and circumstances arise after the public’s opportunity to be heard.

### **III. THE COMMISSION MUST EXPLAIN WHY RESERVE SPECTRUM SHOULD BE CONTINGENT ON AN ARBITRARY REVENUE TARGET THAT EXPANDS THE RISK OF FORECLOSURE.**

The Commission adopted the spectrum reserve to prevent the two largest wireless providers with the most low-band spectrum from starving other carriers of the low-band spectrum resources they need to compete.<sup>27</sup> The Commission thus agreed with the Antitrust Division of the Department of Justice and acknowledged that AT&T and Verizon would likely bid for “spectrum in an attempt to stifle competition that may arise if multiple licensees were to hold low frequency spectrum.”<sup>28</sup>

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<sup>24</sup> The opposing parties argue that the public should have known of the Commission’s intention to ban joint bidding and adopt other measures designed to limit efforts among competitors to overcome the advantages of the dominant incumbents based on, for example, a 2011 Staff Report for an acquisition by AT&T under a prior Chairman or comments in the record. *See* Mobile Future Opposition at 5 (*citing Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations*, Staff Analysis and Findings, WT Docket No. 11-65, (Nov. 29, 2011)); AT&T Opposition at 10. Tellingly, AT&T, for example, does not cite any comments predicting this “unprecedented” announcement or this joint bidding restriction. Instead, in a bootstrap argument revealing why reconsideration is warranted, AT&T cites the Commission’s decision itself as a fact that T-Mobile should have somehow divined. *See* AT&T Opposition at 10.

<sup>25</sup> *See, e.g.*, Verizon Opposition at 7-9.

<sup>26</sup> *See* 47 C.F.R. § 1.429(b) (explaining that a petition may raise arguments that “relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission”).

<sup>27</sup> *See MSH Report and Order* ¶ 174. Absent regulatory intervention, the Commission found that AT&T and Verizon would likely seek to “foreclose competition by denying competitors access to low-band spectrum.” *Id.*

¶ 45.

<sup>28</sup> *Id.* ¶ 62.

AT&T and Verizon concede that incorporating a price per MHz-POP threshold creates new opportunities for the dominant incumbents to foreclose access to low-band spectrum.<sup>29</sup> All parties thus agree that if the price per MHz-POP target is set at a price above the competitive market price (without foreclosure value) in any given partial economic area (“PEA”), AT&T and Verizon have an opportunity to foreclose competitive carriers.<sup>30</sup> In other words, foreclosure is possible at any point after the auction meets its required statutory costs, but before the auction reaches the Commission’s price per MHz-POP target. And because spectrum is notoriously hard to value, the risk of this foreclosure is substantial.<sup>31</sup>

While the opposing parties recognize how a MHz-POP-based reserve trigger reintroduces the opportunity for foreclosure, none of them contend that the Commission acknowledged or adequately explained this possibility. The *Mobile Spectrum Holdings Report and Order* is wholly silent on any rationale for reintroducing this risk of foreclosure to the 600 MHz incentive auction even though the Commission adopted the reserve spectrum framework to reduce or eliminate that very risk.<sup>32</sup> And even if, as AT&T and Verizon argue, the opportunity for foreclosure is narrow, the Commission has offered no reason – much less a compelling reason – to reintroduce that possibility by adopting a price per MHz-POP trigger for the spectrum reserve.<sup>33</sup> At a minimum, the Commission must explain its decision for doing so.

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<sup>29</sup> See Verizon Opposition at 16 (“Foreclosure can occur . . . if and to the extent Verizon and AT&T drive prices up to foreclosure levels.”); AT&T Opposition at 18.

<sup>30</sup> See T-Mobile MSH Petition for Reconsideration at 14.

<sup>31</sup> See, e.g., *id.* at 15 (“[S]pectrum prices are largely unrelated to any kind of fundamental value.”) (quoting Paul de Sa, *Weekend Media Blast: Spectrum, Metaphors and Megahertz*, Bernstein Research (July 18, 2014)).

<sup>32</sup> See generally *MSH Report and Order*. Instead, as explained above, the Commission focuses on the importance of covering the necessary costs, including compensating broadcasters and raising any remaining FirstNet funds, before triggering the spectrum reserve. See *supra* Section II.

<sup>33</sup> To the extent that the Commission is concerned with the ultimate revenues raised at auction, the report it commissioned by Greenhill & Co. LLC regarding auction opportunities for broadcasters removes any doubts regarding the auction raising substantial revenues. See Greenhill & Co., LLC, *Incentive Auction Opportunities for Broadcasters* (Oct. 2014), available at <http://fcc.us/1rSYD4Y>. Greenhill explains that independent studies have

Despite this relative agreement regarding the possibility of foreclosure introduced by the MHz-POP price component of the reserve trigger, AT&T, Verizon, and Mobile Future, contend that the Commission should set the MHz-POP price component of the reserve trigger equal to the market level and that any lesser level would represent a “subsidy.”<sup>34</sup> If one reasonably assumes that the Commission is equally likely to predict too high of a market price as it is to predict too low of a price, however, setting the reserve trigger at the Commission’s predicted price would result in foreclosure roughly half of the time. In other words, despite the Commission’s extensive findings regarding the risk of foreclosure and the importance of low-band spectrum to mobile competition,<sup>35</sup> AT&T, Mobile Future, and Verizon, would set the reserve trigger such that the mechanism protecting against foreclosure (i.e., the spectrum reserve) operates no better than a coin toss.

Finally, AT&T and Verizon contend that T-Mobile’s challenge is filed in the wrong docket or that somehow the Commission’s decision to link the reserve trigger to the second MHz-POP-based price is not “ripe” for review.<sup>36</sup> As to whether this challenge should be filed here (in the Mobile Spectrum Holdings docket) or in the Incentive Auction docket, AT&T does not actually suggest that the Commission’s decision to link the reserve trigger to the second MHz-POP-based reserve price was made in the Incentive Auction decision. Verizon effectively

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estimated total forward auction proceeds could approach \$45 billion and that low-band spectrum usage rights are valuable, with prices continuing to trend upwards. *Id.* at 2, 6-7.

<sup>34</sup> See Mobile Future Opposition at 11 (“[T]riggering the reserve at any [amount lower than the market level] would constitute a subsidy, and would not appear to be justified based on the purpose of the spectrum reserve.”); AT&T Opposition at 6, 18-19 (arguing that T-Mobile is seeking to pay below market prices and that if T-Mobile is willing to pay market prices, the reserve will be available); Verizon Opposition at 16 (arguing that setting the trigger below market value “would convert the [spectrum reserve] from a limited safeguard into a subsidization mechanism”).

<sup>35</sup> See, e.g., *MSH Report and Order* ¶¶ 62-69.

<sup>36</sup> See Verizon Opposition at 14-15; AT&T Opposition at 16, 20.

concedes as much.<sup>37</sup> As to the timing of the challenge, AT&T and Verizon do not suggest an alternative time or docket for reconsideration of the Commission's decision to link the spectrum reserve to a MHz-POP price threshold (as opposed to setting a price itself) – because there is none.

#### **IV. ONLY A LARGER RESERVE WILL ADEQUATELY PROMOTE THE COMMISSION'S OBJECTIVE OF MAINTAINING FOUR NATIONWIDE PROVIDERS.**

The Commission, AT&T, and Verizon have all explained that twenty megahertz of low-band spectrum is necessary for an economical deployment. As the Commission noted, the record of this proceeding contains significant evidence that twenty megahertz of spectrum “is particularly valuable for the deployment of next-generation networks.”<sup>38</sup> AT&T has also argued, for example, that “a 10x10 MHz allocation is necessary to achieve minimal economic and technical efficiencies in an LTE deployment.”<sup>39</sup> Verizon appears to agree, explaining that “LTE provides higher peak and average data rates if deployed over wider bandwidths (10x10 MHz or higher).”<sup>40</sup>

In opposition, AT&T, does not seriously dispute the necessity for access to at least twenty megahertz of low-band spectrum.<sup>41</sup> The fact is that AT&T and Verizon already hold at

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<sup>37</sup> See Verizon Opposition at 15 (“At most, the only aspect of the Final Stage Rule properly presented in the T-Mobile Petition for Reconsideration is whether the [spectrum reserve] should be triggered by a price per MHz-POP threshold.”).

<sup>38</sup> See *MSH Report and Order* ¶ 190.

<sup>39</sup> Letter from Joan Marsh, Vice President of Regulatory Affairs, AT&T, WT Docket No. 12-268 at 2 (filed Apr. 16, 2014). According to Joan Marsh, “in the broadband world in which we now live, [10+10 MHz] is now table stakes for an efficient LTE deployment.” See Joan Marsh, AT&T, *Right on AWS-3* (Mar. 17, 2014), available at <http://bit.ly/1rGC191>.

<sup>40</sup> Stone Supplemental Declaration, Verizon Wireless-SpectrumCo Joint Opposition, WT Docket. No. 12-4 ¶ 8 (filed Mar. 2, 2012).

<sup>41</sup> See, e.g., AT&T Opposition at 12-13 (“If the Commission granted T-Mobile’s Petition, then either AT&T or Verizon (or both) would be precluded from obtaining the minimum 20 MHz of spectrum that T-Mobile claims is needed for an economically feasible deployment.”).

least twenty megahertz of low-band spectrum in markets throughout the country,<sup>42</sup> whereas T-Mobile has no more than twelve megahertz of low-band spectrum available for broadband use in any but a few of the 416 partial economic areas in the upcoming auction. Yet the two dominant carriers continue to argue that they must each have access to an *additional* twenty megahertz in the upcoming Incentive Auction on top of their already considerable low-band spectrum holdings.<sup>43</sup> To the extent that AT&T and Verizon, with their already significant holdings, require twenty megahertz blocks, T-Mobile, with our limited low-band holdings, need those blocks even more.

Remarkably, Verizon and AT&T claim that they require access to at least an additional twenty megahertz of low-band spectrum to meet *capacity* demands, rather than any particular coverage limitations.<sup>44</sup> However, as the Commission explained in the *Mobile Spectrum Holdings Report and Order*, low-band spectrum, with its superior propagation characteristics, is best suited for coverage purposes, while high-band spectrum, which is more widely available, more effectively meets capacity needs.<sup>45</sup> Using valuable coverage spectrum for capacity rather than readily available mid- and upper-band spectrum suggests the type of anti-competitive behavior that the Commission identified as problematic for consumers when it adopted the spectrum

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<sup>42</sup> For example, AT&T owns at least 45 megahertz of low-band spectrum in markets covering over two-thirds of the population and Verizon owns at least 45 megahertz in markets covering nearly five-sixths. (Based on internal T-Mobile Analysis of ULS.)

<sup>43</sup> See, e.g., Letter from the Public Interest Spectrum Coalition, GN Docket No. 12-268, WT Docket No. 12-269 at 2 (filed May 8, 2014) (noting that AT&T and Verizon have argued for an unreserved allocation of at least forty megahertz to ensure that they each are able to obtain a twenty megahertz block); AT&T Opposition to T-Mobile Petition for Reconsideration, WT Docket No. 12-268 at 8 (filed Sept. 24, 2014) (arguing that reducing the forty megahertz of unreserved spectrum “would preclude [AT&T and Verizon] from obtaining efficient levels of spectrum”).

<sup>44</sup> See, e.g., Verizon Opposition at 10 (arguing that the dominant carriers “prefer larger blocks given their capacity needs”); AT&T Opposition at 14 (discussing T-Mobile’s substantial capacity).

<sup>45</sup> See *Mobile Spectrum Holdings Report and Order* ¶ 72.

reserve and all the more reason to reconsider the inadequate, contingent reserve adopted in the *Order*.<sup>46</sup>

The risk of foreclosure is particularly pronounced given just how many markets there are in which AT&T and Verizon can bid on reserved spectrum. While Verizon and AT&T imply that they are precluded from the spectrum reserve,<sup>47</sup> either AT&T or Verizon is actually eligible for reserved spectrum in markets covering over forty percent of the population. The open-ended nature of the reserve not only ensures that AT&T and Verizon can acquire significant amounts of reserve spectrum, but also raises the prospect that competitive carriers will face anti-competitive foreclosure by the two dominant operators in more than forty percent of the country even within the limited, contingent spectrum reserve.<sup>48</sup>

AT&T and Verizon's suggestions that T-Mobile's arguments are unrelated to the Commission's warning against consolidation and announcement regarding a proposed joint bidding ban are, at best, misleading.<sup>49</sup> Of course, the insufficiency of the current reserve to maintain four carriers is the centerpiece of T-Mobile's argument regarding the size of the reserve.<sup>50</sup> At the same time, however, the Commission has also signaled that it may seek to eliminate the ability of T-Mobile and Sprint to bid jointly in the auction to more effectively compete against the dominant carriers. This newly-proposed ban on joint bidding is

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<sup>46</sup> As illustrated by AT&T and Verizon's apparent plans to use coverage spectrum for capacity purposes, AT&T can foreclose competitors without necessarily resorting to warehousing the spectrum. *See* AT&T Opposition at 14.

<sup>47</sup> *See* Verizon Opposition at 13 ("T-Mobile and Sprint will not need to compete against any nationwide incumbents in the reserved pool."); AT&T Opposition at 12 ("If the Commission granted T-Mobile's Petition, then either AT&T or Verizon (or both) would be precluded from obtaining the minimum 20 MHz of spectrum that T-Mobile claims is needed for an economically feasible deployment.").

<sup>48</sup> Based on T-Mobile's analysis of the Commission's Universal Licensing System ("ULS"). AT&T is eligible for the spectrum reserve in markets covering nearly one-third of the population and Verizon is eligible for the spectrum reserve in markets covering over one-sixth of the population. As a result, non-dominant carriers only have an opportunity to bid on reserve spectrum without risk of foreclosure from the two dominant incumbents in markets covering just over half of the population.

<sup>49</sup> *See* Verizon Opposition at 8; AT&T Opposition at 10.

<sup>50</sup> *See* T-Mobile MSH Petition at 7-12.

unprecedented and has never been employed in past auctions.<sup>51</sup> Such a change unfortunately increases the likelihood of foreclosure while also reducing the opportunities for a reserve set at thirty megahertz or less to meaningfully bolster competition.

AT&T, Verizon, and Mobile Future also suggest that reconsidering the size of the spectrum reserve threatens revenues.<sup>52</sup> In truth, expanding the reserve and making a corresponding reduction to the non-reserved spectrum would increase revenue by forcing the two largest, most highly capitalized bidders to compete against one another for an odd number of blocks in the 600 MHz band in those areas where they cannot bid on the reserve, rather than split an even number of non-reserve blocks between them.<sup>53</sup> Instead, the current small, contingent reserve poses a threat to wireless broadband competition, which ultimately brings the greatest returns to consumers, the economy and the U.S. Treasury.<sup>54</sup>

Even if the effect on revenues were a cause for concern, the report forecasting financial opportunities for broadcasters that Greenhill & Co LLC (“Greenhill”) prepared for the Commission should remove any worries whether there will be sufficient auction revenues.<sup>55</sup> Greenhill explains that low-band spectrum usage rights are very valuable, with prices for this

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<sup>51</sup> See, e.g., *Auction of Advanced Wireless Services (AWS-3) Licenses Scheduled for November 13, 2014; Notice and Filing Requirements, Reserve Prices, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 97*, Public Notice, 29 FCC Rcd 8386 (2014); *Auction of 700 MHz Band Licenses Scheduled for January 24, 2008; Notice and Filing Requirements, Minimum Opening Bids, Reserve Prices, Upfront Payments, and Other Procedures for Auctions 73 and 76*, Public Notice, 22 FCC Rcd 18141 (2007).

<sup>52</sup> See, e.g., Verizon Opposition at 12-13; Mobile Future Opposition at 8-10.

<sup>53</sup> See, e.g., Letter from Trey Hanbury, Counsel to T-Mobile USA, Inc., to Marlene Dortch, Secretary, FCC, Docket Nos. 12-268 and 12-269 (Apr. 28, 2014) (explaining that representatives from competitive carriers, including C Spire, DISH, US Cellular, and Sprint, support expansion of the reserve because it would promote auction revenues and wireless competition).

<sup>54</sup> See, e.g., William Lehr, *Benefits of Competition in Mobile Broadband Services* (Mar. 24, 2014), attached to Letter from Rebecca Murphy Thompson, General Counsel, Competitive Carriers Association, to Marlene Dortch, Docket Nos. 13-135, 12-268, 12-269, and 13-185 (Mar. 24, 2014).

<sup>55</sup> See Greenhill & Co., LLC, *Incentive Auction Opportunities for Broadcasters* (Oct. 2014), available at <http://fcc.us/1rSYD4Y>.

spectrum trending upwards.<sup>56</sup> Additionally, Greenhill cites independent revenue forecasts for the forward auction approaching \$45 billion.<sup>57</sup> With predictions of such substantial revenues, the concerns regarding forward auction revenues do not provide a credible justification for an excessively limited and contingent spectrum reserve.

While Verizon and AT&T already have access to considerable low-band resources, the Commission found that Sprint, T-Mobile, and other carriers need access to this spectrum.<sup>58</sup> AT&T, Mobile Future, and Verizon seek to obfuscate this fact by focusing on relative subscriber counts and suggesting that T-Mobile does not need low-band spectrum because it currently has greater spectrum capacity per customer than, for example, Verizon.<sup>59</sup> However, because low-band spectrum is more important for coverage (outdoors and in-building) rather than raw-capacity purposes, the relative subscriber count of T-Mobile to Verizon and AT&T is not relevant.

If the Commission is serious about maintaining four nationwide providers, then it has to ensure that each of those four nationwide providers have access to the “table stakes” amount of spectrum necessary to provide the kind of ubiquitous high-capacity service consumers demand.<sup>60</sup>

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<sup>56</sup> *Id.* at 6-7.

<sup>57</sup> *Id.* at 2.

<sup>58</sup> *See, e.g., MSH Report and Order* ¶¶ 62-69.

<sup>59</sup> *See* Verizon Opposition at 8; AT&T Opposition at 14; Mobile Future Opposition at 8.

<sup>60</sup> *See* Joan Marsh, AT&T, *Right on AWS-3* (Mar. 17, 2014), *available at* <http://bit.ly/1rGC191> (“[I]n the broadband world in which we now live, [10+10 MHz] is now table stakes for an efficient LTE deployment.”).

## V. CONCLUSION

For the foregoing reasons and for the reasons explained in T-Mobile's Petition, the Commission should reconsider its *Mobile Spectrum Holdings Report and Order* by (1) severing the link between the spectrum reserve trigger and the MHz-POP price component of the final stage rule; and (2) ensuring that at least half of the available 600 MHz Auction spectrum is included in the spectrum reserve.

Respectfully submitted,

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